UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LARRY KELLER, Derivatively on Behalf of GALENA BIOPHARMA, INC., Plaintiff,	Index No:
vs.	**VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT**
WILLIAM L. ASHTON, RICHARD CHIN, IRVING M. EINHORN, STEPHEN GALLIKER, MARY ANN GRAY, SANFORD J. HILLSBERG, RUDOLPH NISI, Defendants,	**DEMAND FOR JURY TRIAL**
and,	
GALENA BIOPHARMA, INC., Nominal Defendant.	

Plaintiff Larry Keller, by and through his undersigned counsel, derivatively on behalf of Nominal Defendant Galena Biopharma, Inc. ("Galena" or the "Company"), submit this Verified Shareholder Derivative Complaint (the "Complaint"). Plaintiff's allegations are based upon his personal knowledge as to himself and his own acts, and upon information and belief, developed from the investigation and analysis by Plaintiff's counsel, including a review of publicly available information, including filings by Galena with the U.S. Securities and Exchange Commission ("SEC"), press releases, news reports, analyst reports, investor conference transcripts, publicly available filings in lawsuits, and matters of public record.

NATURE OF THE ACTION

1. This is a shareholder derivative action brought in the right, and for the benefit, of

Galena against certain of its directors seeking to remedy Defendants' breach of fiduciary duties, gross mismanagement, and unjust enrichment that occurred between August 11, 2014 to the present (the "Relevant Period"), and which has caused substantial harm to Galena.

2. Plaintiff is informed and believes and thereon alleges that during the Relevant Period, Defendants participated in a scheme of illegal marketing and promotion practices resulting in unsustainable sales relating to their product, Abstral, and compounded by false and/or misleading statements about the Company's business, operations and prospects to its shareholders and the public.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the claims asserted herein under 28 U.S.C. § 1332 because there is complete diversity among the parties and the amount in controversy exceeds the sum of $75,000, exclusive of interest and costs.

4. Venue is proper in this Court under 28 U.S.C. § 1931(b) because a substantial portion of the transactions and wrongs complained of herein occurred in this District, and by doing business here and engaging in numerous activities that had an effect in this District.

PARTIES

Plaintiff

5. ***Plaintiff Larry Keller*** is, and was at relevant times, a shareholder of Galena. Plaintiff will fairly and adequately represent the interests of the shareholders in enforcing the rights of the corporation. Plaintiff is a citizen of Washington.

Nominal Defendant

6. ***Nominal Defendant Galena Biopharma, Inc.*** ("Galena") is a Delaware corporation with principal executive offices located in San Ramon, California. Galena is a

biopharmaceutical company which focuses on developing hematology and oncology treatments.

Director Defendants

7. ***Defendant William L. Ashton*** ("Ashton") was appointed as a director of Galena on April 26, 2013. At various relevant times, Ashton served as the Chair of Galena's Compensation Committee, and was also a member of the Company's Nominating and Governance, and Strategy/Ad Hoc committees. Plaintiff is informed and believes and thereon alleges that Ashton is a citizen of Pennsylvania.

8. ***Defendant Richard Chin, M.D.*** ("Chin") has been a member of the Company's Board since 2009. At various relevant times, Chin was a member of the Company's Nominating and Governance, Audit, and Compensation committees. Plaintiff is informed and believes and thereon alleges that Chin is a citizen of California.

9. ***Defendant Irving M. Einhorn, J.D.*** ("Einhorn") has been a member of the Company's Board since March 2014. At various relevant times, Einhorn was a member of the Company's Nominating and Governance, and Audit committees. Plaintiff is informed and believes and thereon alleges that Einhorn is a citizen of California.

10. ***Defendant Stephen Galliker, CPA*** ("Galliker") has been a member of the Company's Board since 2007. At various relevant times, Galliker served as the Chair of Galena's Audit Committee and was also a member of the Company's Compensation, and Nominating and Governance Committees. Plaintiff is informed and believes and thereon alleges that Galliker is a citizen of Florida.

11. ***Defendant Mary Ann Gray, Ph.D.*** ("Gray") was announced as a new director on April 26, 2016. Sometime after the 2016 Proxy Statement, Gray became a member of the Company's Nominating and Governance, and Audit committees. Plaintiff is informed and

believes and thereon alleges that Gray is a citizen of New York.

12. ***Defendant Sanford J. Hillsberg, J.D***. ("Hillsberg") has served as the Company's Chairman of the Board of Directors since 2007, and at all relevant times, also serves as the Chair of the Strategy/Ad Hoc Committee. Plaintiff is informed and believes and thereon alleges that Hillsberg is a citizen of California.

13. ***Defendant Rudolph Nisi, M.D.*** ("Nisi") has served as a director of the Company since 2009. At various relevant times, Nisi served as the Chair of Galena's Nominating and Governance Committee, and was also a member of the Company's Audit, Compensation, and Strategy / Ad Hoc committees. Plaintiff is informed and believes and thereon alleges that Nisi is a citizen of New York.

14. The following is a chart of each listed director's Committee membership:

Directors	Corporate Nominating and Governance Committee				Audit Committee				Compensation Committee				Strategy (Ad Hoc) Committee			
	2014 Proxy	2015 Proxy	2016 Proxy	2017 Website	2014 Proxy	2015 Proxy	2016 Proxy	2017 Website	2014 Proxy	2015 Proxy	2016 Proxy	2017 Website	2014 Proxy	2015 Proxy	2016 Proxy	2017 Website
WILLIAM L. ASHTON		x	x	x						Chair	Chair	Chair	x	x	x	x
RICHARD CHIN	x			x	x	x	x		x	x	x	x				
IRVING M. EINHORN		x	x	x				x								
STEPHEN GALLIKER	x	x	x		Chair	Chair	Chair	Chair				x				
MARY ANN GRAY				x				x								
RUDOLF NISI	Chair	Chair	Chair	Chair	x	x	x	x	x		x	x	x	x	x	x
SANFORD J. HILLSBERG													Chair	Chair	x	Chair
STEVEN A. KRIEGSMAN									Chair	x	x		x	x	x	
MARK W. SCHWARTZ																

15. Defendants Ashton, Chin, Einhorn, Galliker, Gray, Hillsberg, and Nisi, are hereinafter referred to as the "Director Defendants".

Relevant Non Party Defendants

16. ***Steven A. Kriegsman*** ("Kriegsman") was a director of Galena from 2006 until his resignation effective on the expiration of his term which was immediately prior to the June 2016 Annual Meeting of Stockholders. At various relevant times, Kriegsman served as the

Chair or was a member of Galena's Compensation Committee, and was also a member of the Company's Strategy/Ad Hoc committee.

17. ***Mark W. Schwartz, Ph.D.***, ("Schwartz") was appointed as a director of the Company on September 16, 2014, until his resignation on January 31, 2017. He also was the Company's President and Chief Executive Officer ("CEO") from August 21, 2014 until his resignation on January 31, 2017.

18. ***Mark J. Ahn*** ("Ahn") was the Company's CEO and President from the beginning of the Relevant Period through August 21, 2014.

19. ***Ryan M. Dunlap*** ("Dunlap") was the Company's Chief Financial Officer ("CFO") from the beginning of the Relevant Period until his resignation effective December 31, 2015.

20. ***John T. Burns*** ("Burns") has been the Company's Controller since June 2015 and its Principal Accounting Officer since February 23, 2016.

CORPORATE CODE OF ETHICS AND CONDUCT, CORPORATE GOVERNANCE, and OTHER AGREEMENTS

21. As members of Galena's Board, the Director Defendants were held to the highest standards of honesty and integrity and charged with overseeing the Company's business practices and policies, and assuring the integrity of its financial and business records.

22. Galena's Corporate Code of Ethics and Conduct states in part:

> **1. General Policy**
>
> It is the policy of Galena Biopharma, Inc. (the "Company") to conduct business in compliance with all applicable laws, rules and regulations. Further, it is our policy to conduct business with integrity. We make this commitment to our customers, to our partners, to our shareholders, to our community, to those government agencies that regulate the Company, and to ourselves.

* * *

2. Compliance with the Law

The Company seeks to comply with all applicable government laws, rules and regulations. We need the cooperation of all employees, officers and directors to do so and to bring lapses or violations to light. While some regulatory schemes may not carry criminal penalties, they control the licenses and certifications that allow the Company to conduct its business. The Company's continued ability to operate depends upon your help for compliance.

Some of the regulatory programs, which employees may deal with in the course of their duties, include, but are not limited to, the following:

- Labor laws.
- Occupational Safety and Health regulation.
- Building, safety, and fire codes.
- Wage and Hour Laws.
- ***Laws and regulations*** pertaining to the development, manufacture and sale of biopharmaceutical products, including, without limitation, the U. S. Food, Drug & Cosmetic Act and all applicable U.S. Food and Drug Administration regulations and guidance documents ***relating to the manufacture, promotion and sale of biopharmaceutical products.*** [Emphasis added]

5. Special Ethical Obligations for Employees with Public Reporting Responsibilities

As a public company, we are also committed to carrying out all continuing disclosure obligations in a full, fair, accurate, timely and understandable manner.

Depending on their position with the Company, employees, officers or directors may be called upon to provide information to assure that the Company's public reports are complete, fair and understandable. The Company expects all of its personnel to take this responsibility very seriously and to provide prompt and accurate answers to inquiries related to the Company's public disclosure requirements.

Because of this special role, all employees, officers, and directors are bound by the following Code of Ethics, and by accepting this

Code of Ethics, each agrees, as applicable, that he or she will:

- Act with honesty and integrity, avoiding actual or apparent conflicts of interest in personal and professional relationships.
- ***Provide information that is accurate***, complete, objective, relevant, timely and understandable to ensure full, fair, accurate, timely, and understandable disclosure in reports and documents that [Company] files with, or submits to, government agencies and in other public communications.
- Comply with rules and regulations of federal, state, provincial and local governments, and other appropriate private and public regulatory agencies.
- ***Act in good faith, responsibly, with due care, competence and diligence, without misrepresenting material facts*** or allowing one's independent judgment to be subordinated.
- Respect the confidentiality of information acquired in the course of one's work except when authorized or otherwise legally obligated to disclose. Confidential information acquired in the course of one's work will not be used for personal advantage.
- Share knowledge and maintain skills important and relevant to shareholder's needs.
- Proactively promote and be an example of ethical behavior as a responsible partner among peers, in the work environment and the community.
- Achieve responsible use of and control over all assets and resources employed or entrusted.

The Accounting Department bears a special responsibility for promoting integrity throughout the organization, with responsibilities to shareholders both inside and outside of the Company. ***The Chief Executive Officer, the Chief Financial Officer and other Accounting Department personnel have a special role both to adhere to these principles themselves*** and also to ensure that a culture exists throughout the company as a whole that ensures the fair and timely reporting of the Company's financial results and condition. [Emphasis added]

* * *

18. Media/Public Relations and Governmental Inquiries

When the Company provides information to the news media, securities analysts and stockholders, it has an obligation to do so accurately and completely….

23. The conduct of Defendants complained of herein involves a knowing and culpable violation of their obligations as directors and officers of Galena, the absence of good faith on their part, and a reckless disregard for their duties to the Company and its investors that Defendants were aware posed a risk of serious injury to the Company.

24. As described in its website, Galena maintains the following Committees: Audit, Compensation, Nominating and Governance, and Ad Hoc (which adds a parenthetical description of "Strategy, Pricing, etc."). With the exception of the Ad Hoc Committee, each Committee has a charter setting forth that committee's purpose and responsibilities, each which is published on its website.

25. In its Schedule 14A Proxy Statement, filed with the SEC on June 3, 2016 (the "6/3/16 Proxy"), Galena includes a list of its Committees and a description of each Committee. Contrary to its website, the Ad Hoc Committee is not listed. However, the Company does list a Strategy Committee, and provides the following description:

> The Strategy Committee acts as the primary contact between management of our Company and our Board of Directors with respect to developing and implementing our Company's long-term strategic plans and, together with management of the Company, reviewing and making recommendations to the Board of Directors with respect to prioritizing and funding strategic programs, the material terms and provisions of prospective strategic transactions, including financing transactions. The Strategy Committee reviews potential transactions to determine if they fit with the Company's corporate goals and long-term strategy and assists management with determining what, if any, resources should be devoted to pursuing those opportunities. ***The Strategy Committee does not have a formal charter***, holds one regularly scheduled meeting per year, and also meets at the request of the Company's management when the need arises. In addition to any formal meetings, management often seeks the advice of members of the Strategy Committee when conducting its initial evaluation of program prioritization and potential transactions. [Emphasis added]

26. Galena's various Committee charters provide in relevant part:

(a) **Charter of the Audit Committee** – This Charter states in relevant part:

> Purpose…. The Audit Committee shall also assist the Board in fulfilling its responsibility to oversee the Company's compliance with legal and regulatory requirements.
>
> * * *
>
> Responsibilities of the Committee.
>
> a. General. The function of the Committee is oversight….
>
> * * *
>
> c. Oversight of the Audit Process and the Company's Legal Compliance
>
> * * *
>
> vii. Review material pending legal proceedings involving the Company and other contingent liabilities.
>
> viii. Receive from the Chief Executive Officer and Chief Financial Officer a report of all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting and any fraud that involves management or other employees who have a significant role in the Company's internal controls.
>
> * * *
>
> xiii. Review the metrics used by management to provide insight into the Company's compliance and quality systems and organization; and
>
> xiv. At least annually, review with the Chief Compliance Officer the status of the Company's compliance with its Code of Business Conduct and Ethics, internal Company policies, insider trading policy, and non-healthcare related laws and regulations, including the

federal securities laws.

(b) Charter of the Nominating and Corporate Governance Committee –

This Charter states in relevant part:

Purpose of the Committee

> The primary purpose of the Committee is to… (3) periodically review the Company's corporate governance principles and, if necessary or otherwise appropriate, recommend modifications to such principles for Board approval, and (4) oversee the periodic evaluation of the Board, its committees and the Company's Chairman of the Board and Chief Executive Officer.

(c) **Charter of the Compensation Committee** – This Charter states in relevant part:

Duties and Responsibilities

> The responsibilities of the Committee include the following:
>
> * * *
>
> - Review objectives relevant to executive officer compensation, evaluate the performance of executive officers in light of those goals and objectives and determine the compensation of non-CEO executive officers based on this evaluation;
>
> * * *

Powers of the Compensation Committee

> In order to fulfill its role, the Committee shall have the following powers:
>
> * * *
>
> - Compensation of Chief Executive Officer. The Compensation Committee shall review, determine and recommend for approval by the Board the compensation and other terms of employment of the Company's Chief Executive Officer and shall

> evaluate the Chief Executive Officer's performance in light of relevant performance goals and objectives….

(d) **Charter of the Ad Hoc Committee** – As stated above, this Committee has no published Charter or other guidelines and is described merely as involving "Strategy, Pricing, etc".[1] The 6/3/16 Proxy describes this Committee as the Strategy Committee.

27. On July 14, 2016, Galena adopted a Disclosure Policy, which states in relevant part:

> **Objective**
>
> The objective of this Disclosure Policy is to prevent selective disclosure of material nonpublic information regarding Galena Biopharma, Inc. (the "Company") and to ensure that communications to the public by or on behalf of the Company are:
>
> - Factual and accurate
> - Disseminated on a timely basis and in a manner reasonably designed to provide broad, nonexclusionary distribution of information to the public
> - Made in a manner that complies with Regulation FD and other applicable laws
>
> Premature, selective or otherwise unauthorized disclosure of internal or non-public information relating to the Company could adversely affect the Company's ability to meet its disclosure obligations under the federal securities laws. In addition, premature, selective or unauthorized disclosure could cause competitive harm to the Company and in some cases could result in liability for the Company. Further, all information, whether material or immaterial, provided to outsiders must be accurate and consistent with these responsibilities.
>
> **Designation of Authorized Spokespersons**
>
> All calls concerning Galena stock and the Company's performance are referred to authorized spokespersons who are knowledgeable of the company's financials and have strong working knowledge of

[1] *See* http://investors.galenabiopharma.com/investors/corporate-governance/committeecomposition/default.aspx

> disclosure rules. Only the following persons (the "Authorized Spokespersons") are authorized to communicate (including responding to inquiries) on behalf of the Company with the media, market professionals (e.g., securities analysts, institutional investors, investment advisers, brokers and dealers) and security holders unless other Authorized Spokespersons are identified:
>
> - Chief Executive Officer
> - Chief Financial Officer
> - Senior Vice President of Investor Relations and Corporate Communications
> - General Counsel
> - Controller or Principal Accounting Officer
> - Chief Medical Officer – for disclosure of all clinical/regulatory items
>
> The Company will maintain procedures designed to ensure that the Authorized Spokespersons are kept informed of material developments affecting the Company.
>
> * * *
>
> **Disclosure of Material Nonpublic Information**
>
> Definitions of "Material" and "Nonpublic"
>
> Information concerning the Company is considered material if there is a substantial likelihood that a reasonable shareholder would consider the information important in making a decision to buy or sell the Company's securities. Stated another way, there must be a substantial likelihood that a reasonable shareholder would view the information as having significantly altered the "total mix" of information available about the Company….

28. On September 16, 2014, Galena entered into a written employment agreement with Schwartz and relating to his position as President and CEO of the Company, effective August 21, 2014. Relating to Clawback and Termination, this agreement provides in part:

> 5.8 Clawback Provisions. Notwithstanding any other provisions in this Agreement to the contrary, any discretionary or other incentive-based compensation paid to Employee pursuant to this Agreement or any other agreement or arrangement with the Company which is subject to recovery under any law, government

regulation or stock exchange listing requirement will be subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation or stock exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or stock exchange listing requirement).

6. Termination. This Agreement and Employee's employment may be terminated as set forth in the Section 6.

6.1 Termination by Employer for Cause; Termination by Employee. Employer may terminate Employee's employment hereunder at any time for "Cause" upon notice to Employee, and Employee may terminate his employment hereunder voluntarily without "Good Reason" (as hereinafter defined) upon not less than ninety (90) day's prior notice to Employer (which termination may, in Employer's sole discretion, be made effective at any time prior to the expiration of such ninety (90) day notice period). "Cause" for the purpose of this Agreement shall mean any of the following:

(a) Employee's breach of any material term of this Agreement, including its Exhibits; provided that the first occasion of any particular breach shall not constitute Cause unless Employee shall have previously received written notice from Employer stating the nature of such breach and affording Employee at least ten (10) days to correct such breach;

* * *

(c) Employee's act of fraud or dishonesty injurious to Employer or its reputation;

(d) Employee's continual failure or refusal to perform his material duties as required under this Agreement after written notice from Employer stating the nature of such failure or refusal and affording Employee at least ten (10) days to correct the same;

* * *

(g) any violation by Employee of any of Employer's written policies, code of conduct or workplace rules in effect from time to time that is materially injurious to Employer;…

Upon termination of Employee's employment by Employer for Cause or by Employee voluntarily without Good Reason, all compensation and benefits to Employee hereunder shall cease, except that Employee shall be entitled to payment, in accordance with applicable law and in any event not later than three days after the date of termination, of (i) any accrued but unpaid salary and accrued and unused paid "time off," (ii) any unpaid bonus that shall have been previously awarded to Employee as provided in Section 5.2, and (iii) reimbursement of business expenses accrued but unpaid as of the date of termination. In addition, Employer's indemnification obligations shall remain in effect in accordance with the terms thereof.

6.2 Termination by Employer without Cause. Employer may also terminate Employee's employment without Cause upon notice to Employee. Upon any termination pursuant to this Section 6.2, Employee shall be entitled to payment of:

(a) in accordance with applicable law and in any event not later than three days after the date of termination, any accrued and unused paid "time off" in accordance with applicable law) and reimbursement of business expenses accrued but unpaid as of the date of termination;

(b) salary at the then-current Base Salary, and without taking into account any bonus payments made pursuant to Section 5.2, for the six (6) month period following the date of termination (the "Severance Period"), payable in accordance with Section 5.1; provided, however, that, in the event of Employer's termination of Employee's employment pursuant to this Section 6.2 at any time on or after the date six (6) months following the Effective Date, the Severance Period shall be the twelve (12) month period following the date of termination;

(c) accelerated vesting as of the date of termination of unvested, vesting stock options held by Employee as of the date of termination that otherwise would have become vested had Employee remained in Employer's employ throughout the Severance Period;

(d) an amount equal to the monthly premium Employee would be required to pay for continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA")…

DUTIES OF DEFENDANTS

29. By reason of their positions as officers and/or directors of the Company, and

because of their ability to control the business and corporate affairs of Galena, Defendants owed Galena and its investors the fiduciary obligations of trust, loyalty, and good faith. The obligations required Defendants to use their utmost abilities to control and manage Galena in an honest and lawful manner. Defendants were and are required to act in furtherance of the best interests of Galena and its investors.

30. Each director of the Company owes to Galena and its investors the fiduciary duty to exercise loyalty, good faith, and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets. In addition, as officers and/or directors of a publicly held company, Defendants had a duty to promptly disseminate accurate and truthful information with regard to the Company's operations, finances, and financial condition, as well as present and future business prospects, so that the market price of the Company's stock would be based on truthful and accurate information.

31. To discharge their duties, the officers and directors of Galena were required to exercise reasonable and prudent supervision over the management, policies, practices, and controls of the affairs of the Company. By virtue of such duties, the officers and directors of Galena were required to, among other things:

(a) ensure that the Company complied with its legal obligations and requirements, including acting only within the scope of its legal authority and disseminating truthful and accurate statements to the SEC and the investing public;

(b) conduct the affairs of the Company in an efficient, businesslike manner so as to make it possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock;

(c) properly and accurately guide investors and analysts as to the true financial condition of the Company at any given time, including making accurate statements about the Company's business prospects, and ensuring that the Company maintained an adequate system of financial controls such that the Company's financial reporting would be true and accurate at all times;

(d) remain informed as to how Galena conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, make reasonable inquiries in connection therewith, take steps to correct such conditions or practices, and make such disclosures as necessary to comply with federal and state securities laws;

(e) ensure that the Company was operated in a diligent, honest, and prudent manner in compliance with all applicable federal, state and local laws, and rules and regulations; and

(f) ensure that all decisions were the product of independent business judgment and not the result of outside influences or entrenchment motives.

32. Each defendant, by virtue of his position as a director and/or officer, owed to the Company and to its shareholders the fiduciary duties of loyalty, good faith, and the exercise of due care and diligence in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets. The conduct of Defendants complained of herein involves a knowing and culpable violation of their obligations as directors and officers of Galena, the absence of good faith on their part, and a reckless disregard for their duties to the Company and its shareholders that Defendants were aware, or should have been aware, posed a risk of serious injury to the Company.

SUBSTANTIVE ALLEGATIONS

Background

33. Galena's first commercial product was Abstral which was approved to treat pain in cancer patients who were already receiving, and who are tolerant to, opioid treatment for their persistent baseline cancer.

34. On November 9, 2015, the Company filed a Form 10-Q for the quarter ending September 30, 2015 (the "3Q15 10-Q") with the SEC. The 3Q15 10-Q was signed by Defendants Schwartz and Dunlap. In this 3Q15 10-Q and under Risk Factors, Galena announced plans to discontinue its commercial operations and sell or otherwise dispose of its marketed products, Abstral and Zuplenz, stating in relevant part:

> ***We have determined to sell or otherwise dispose of our marketed products, Abstral*** and Zuplenz, and discontinue our commercial operations in order to focus our resources on our clinical development programs. There can be no assurance that any sale of our marketed products could be completed in a timely manner, on a cost-effective basis, on terms favorable to us, or at all.
>
> * * *
>
> We believe that our strategy will result in significant future net savings to us, but there is no assurance that we will obtain any significant proceeds from the sale or other disposition of our commercial operations or that the process will result in significant value for our stockholders. ***If we sell or discontinue our commercial operations, we will have no recurring revenue unless and until we are able to obtain marketing approval of one or more of our product candidates***. [Emphasis added].

35. On November 20, 2015, in a Form 8-K Report filed with the SEC and in a contemporaneous press release, Galena announced that it sold Abstral to a private company in a deal valued at up to $12 million.

MATERIALLY FALSE AND MISLEADING STATEMENTS MADE DURING THE RELEVANT PERIOD

36. On August 11, 2014, the Company filed a Form 10-Q for the quarter ending June 30, 2014 (the "2Q14 10-Q") with the SEC. The 2Q14 10-Q was signed by Ahn and Dunlap. Attached to the 2Q14 10-Q were certifications pursuant to the Sarbanes Oxley Act of 2002 ("SOX") signed by Ahn and Dunlap attesting to the accuracy of the financial statements, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure all fraud was disclosed.

37. The 2Q14 10-Q discussed the selling of Abstral, stating in relevant part:

> We sell Abstral product in the United States to wholesale pharmaceutical distributors and retail pharmacies, or our "customers," subject to rights of return. We recognize Abstral product sales at the time title transfers to our customer, and provide allowances for estimated future product returns, prompt pay discounts, wholesaler discounts, rebates, chargebacks, patient assistance program benefits and other deductions as needed. The company is required to make significant judgments and estimates in determining some of these allowances. If actual results differ from its estimates, the company will be required to make adjustments to these allowances in the future.

38. On March 5, 2015, the Company filed its annual report on Form 10-K for the year ending December 31, 2014 (the "2014 10-K") with the SEC. The 2014 10-K was signed by Schwartz and Dunlap. Attached to the 2014 10-K were signed SOX certifications by Schwartz and Dunlap attesting to the accuracy of the financial statements, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure all fraud was disclosed.

39. The 2014 10-K discussed the selling of Abstral, stating in relevant part:

> ***Abstral Target Revenue Achieved -- We achieved our target net revenue from the sale of Abstral for 2014.***
>
> On March 5, 2015, we announced our results of operations from the quarter and the fiscal year ended December 31, 2014, including net revenue of $9.3 million from the sale of Abstral. We also

> reiterated our 2015 net revenue expectations of $15 million to $18 million.
>
> * * *
>
> We sell Abstral product in the United States to wholesale pharmaceutical distributors and retail pharmacies, or collectively, our "customers," subject to rights of return. During the year ended December 31, 2013, we began recognizing Abstral product sales at the time title transfers to our customer, and providing for an estimate of future product returns. Revenue from product sales is recorded net of provisions for estimated returns, prompt pay discounts, wholesaler discounts, rebates, chargebacks, patient assistance program rebates and other deductions as needed. Refer to Note 1 of the notes to the consolidated financial statements for a detailed description of these reserves.

40. The statements contained in ¶¶ 36-39 were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company's business, operations and prospects, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (a) the Company's sales of Abstral were based on unsustainable sales and marketing practices; (b) such sales and marketing practices could subject the Company to a criminal investigation; and (c) as a result, Defendants' statements about the Company's business, operations, and prospects, were materially false and misleading and/or lacked a reasonable basis at all relevant times.

THE TRUTH EMERGES

41. On December 22, 2015, Galena filed a Form 8-K with the SEC signed by Schwartz disclosing that Galena received a subpoena from the U.S. Attorney's Office for the District of New Jersey, stating in relevant part:

> On December 16, 2015, Galena Biopharma, Inc. ("Galena") received a subpoena from the U.S. Attorney's Office for the District of New Jersey. The subpoena requests the production of a

> broad range of documents pertaining to marketing and promotional practices related to the product ABSTRAL® (fentanyl) Sublingual Tablets. Galena intends to cooperate with the government's investigation. Galena can make no assurances as to the time or resources that will need to be devoted to this inquiry or its final outcome, or the impact, if any, of this inquiry or any proceedings on Galena's business, financial condition, results of operations and cash flows.

42. On this news, shares of Galena fell $0.06 per share or over 3.6% from its previous closing price to close at $1.57 per share on December 23, 2015, damaging investors.

43. On March 10, 2016, the Company filed its annual report on Form 10-K for the year ending December 31, 2015 (the "2015 10-K") with the SEC. The 2015 10-K was signed by Schwartz and Burns. Attached to the 2015 10-K were signed SOX certifications by Schwartz and Burns attesting to the accuracy of the financial statements, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure all fraud was disclosed.

44. The 2015 10-K discussed the selling of Abstral, stating in relevant part:

> We sold Abstral product in the United States to wholesale pharmaceutical distributors and retail pharmacies, or collectively, our "customers," subject to rights of return. During the year ended December 31, 2013, we began recognizing Abstral product sales at the time title transfers to our customer, and providing for an estimate of future product returns. Revenue from product sales is recorded net of provisions for estimated returns, prompt pay discounts, wholesaler discounts, rebates, chargebacks, patient assistance program rebates and other deductions as needed.

45. The 2015 10-K also discussed the subpoena the Company received from the U.S. Attorney's Office for the District of New Jersey, stating in relevant part:

> A federal investigation of two of the high-prescribing physicians for Abstral has resulted in the criminal prosecution of the two physicians for alleged violations of the federal False Claims Act and other federal statutes. The criminal trial is set for some time in 2016. We have received a trial subpoena for documents in

> connection with that investigation and we have been in contact with the U.S. Attorney's Office for the Southern District of Alabama, which is handling the criminal trial, and are cooperating in the production of documents. We are a target or subject of that investigation. There also have been federal and state investigations of a company that has a product that competes with Abstral in the same therapeutic class, and we have learned that the FDA and other governmental agencies may be investigating our Abstral promotion practices. On December 16, 2015, we received a subpoena issued by the U.S. Attorney's Office in District of New Jersey requesting the production of a broad range of documents pertaining to our marketing and promotional practices for Abstral. We have been in contact with the U.S. Attorney's Office for the District of New Jersey and are cooperating in the production of the requested documents. We are unable to predict whether we could become subject to legal or administrative actions as a result of these matters, or the impact of such matters. If we are found to be in violation of the False Claims Act, Anti-Kickback Statute, Patient Protection and Affordable Care Act, or any other applicable state or any federal fraud and abuse laws, we may be subject to penalties, such as civil and criminal penalties, damages, fines, or an administrative action of exclusion from government health care reimbursement programs. We can make no assurances as to the time or resources that will need to be devoted to these matters or their outcome, or the impact, if any, that these matters or any resulting legal or administrative proceedings may have on our business or financial condition.
>
> The federal False Claims Act prohibits persons from knowingly filing, or causing to be filed, a false claim to, or the knowing use of false statements to obtain payment from, the federal government. *Qui tam* suits filed under the False Claims Act can be brought by any individual on behalf of the government and such individuals, commonly known as "relators" or "whistleblowers," may share in any amounts paid by the entity to the government in fines or settlement. The frequency of filing qui tam actions has increased significantly in recent years, causing greater numbers of health care companies to have to defend such *qui tam* actions and pay substantial sums to settle such actions.

46. Plaintiff is informed and believes and thereon alleges that the two high prescribing physicians mentioned in the 2015 10-K (*see* ¶ 45, above) are Dr. Xiulu Ruan and Dr. John Patrick Couch, who were the principals of Physicians Pain Specialists of Alabama

clinics and also co-owned C&R Pharmacy.

47. On this news, shares of Galena fell $0.03 per share from its previous closing price to close at $0.86 per share on March 11, 2016, damaging investors.

48. The statements contained in ¶¶ 43-45 were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company's business, operations and prospects, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (a) the Company's sales of Abstral were based on unsustainable sales and marketing practices; (b) such sales and marketing practices could subject the company to a criminal investigation; and (c) as a result, Defendants' statements about the Company's business, operations, and prospects, were materially false and misleading and/or lacked a reasonable basis at all relevant times.

49. On April 29, 2016, the Company filed its 3rd amended annual report on Form 10-K/A for the year ending December 31, 2015 (the "2015 10-K/A") with the SEC. The 2015 10-K/A was signed by Schwartz. Attached to the 2015 10-K/A were signed SOX certifications by Schwartz and Burns attesting to the accuracy of the financial statements, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure all fraud was disclosed.

50. In the 2015 10-K/A, Galena disclosed for the first time that ***on December 17, 2015, the day after it received a subpoena from the U.S. Attorney's Office for the District of New Jersey*** requesting the production of a broad range of documents pertaining to marketing and promotional practices related to Abstral (*see* ¶ 41, above), the Compensation Committee met and recommended that the Board of Directors approve a grant to Schwartz of a stock option

to purchase 1,250,000 shares of common stock. On December 18, 2015, the Board of Directors approved this recommendation. Under the Executive Compensation section, the 2015 10-K/A states in relevant part:

> **Overview**
>
> As a result of certain revisions to its charter, the Compensation Committee is responsible for reviewing and approving the compensation of our executive officers other than the Chief Executive Officer (CEO) whose compensation is recommended by the Compensation Committee and approved by the Board of Directors. In fulfilling its oversight responsibilities, the Compensation Committee reviewed and discussed with management the Compensation Discussion and Analysis set forth in this Proxy Statement.
>
> * * *
>
> *Equity Incentive Compensation*
>
> * * *
>
> At a meeting on December 17, 2015, our Compensation Committee recommended to the Board of Directors for approval a grant to Dr. Schwartz of a stock option to purchase 1,250,000 shares of our common stock at an exercise price of $1.50 per share, which equaled the closing market price on the date of grant. The options will vest quarterly over four years, unless Dr. Schwartz's employment is terminated by us without "cause," or by Dr. Schwartz for "good reason," in which case they continue to vest over a 12-month severance period. On December 18, 2015, the Board of Directors approved the recommendation of the Compensation Committee….

51. In the 2015 10-K/A, the Company also disclosed that at the same December 17, 2015 Compensation Committee meeting, and in addition to its recommended (and Board approved) stock option grant to Schwartz, it approved and awarded stock options to Bijan Nejadnik (Chief Medical Officer) and Thomas Knapp (General Counsel).

52. Related to this December 17, 2015 Compensation Committee meeting and its

decision making process, on May 24, 2016 the Company filed a Preliminary Proxy Statement (the "Pre-14A"). Under the Compensation Discussion and Analysis section, the Pre-14A states in relevant part:

> **Overview**
>
> As a result of certain revisions to its charter, the Compensation Committee is responsible for reviewing and approving the compensation of our executive officers other than the Chief Executive Officer (CEO) whose compensation is recommended by the Compensation Committee and approved by the Board of Directors. In fulfilling its oversight responsibilities, the Compensation Committee reviewed and discussed with management the Compensation Discussion and Analysis set forth in this Proxy Statement.
>
> * * *
>
> **Role of Executive Officers in Compensation Decisions**
>
> We conduct an annual review of executive compensation, generally in the fourth quarter of the year in review, with a presentation by our CEO to the Compensation Committee regarding each element of our executive compensation arrangements. ***The Compensation Committee's most recent review occurred on December 17, 2015*** with respect to our annual cash bonuses and stock option grants for 2015 and increases in base salaries for 2016. ***At the Compensation Committee's direction our CEO prepares an executive compensation review for*** each named executive officer and ***himself***….

53. On August 8, 2016, the Company filed its 10-Q for the quarterly period ending June 30, 2016 (the "2Q16 10-Q") with the SEC. The 2Q16 10-Q was signed by Schwartz and Burns. Attached to the 2Q16 10-Q were certifications pursuant to the Sarbanes Oxley Act of 2002 ("SOX") signed by Schwartz and Burns attesting to the accuracy of the financial statements, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure all fraud was disclosed.

54. Under Legal Proceedings, the 2Q16 10-Q states in relevant part:

> A federal investigation of two of the high-prescribing physicians for Abstral has resulted in the criminal prosecution of the two physicians for alleged violations of the federal False Claims Act and other federal statutes. The criminal trial is set for October 2016. We have received a trial subpoena for documents in connection with that investigation and we have been in contact with the U.S. Attorney's Office for the Southern District of Alabama, which is handling the criminal trial, and are cooperating in the production of documents. ***On April 28, 2016, a second superseding indictment was filed in the criminal case, which added additional information about the defendant physicians and provided information regarding the facts and circumstances involving a rebate agreement between the Company and the defendant physicians' pharmacy*** as well as their ownership of our stock. Certain former employees have received trial subpoenas to appear at the trial and provide oral testimony. We have agreed to reimburse those former employees' attorney's fees. To our knowledge, we are not a target or subject of that investigation.
>
> There also have been federal and state investigations of a company that has a product that competes with Abstral in the same therapeutic class, and we have learned that the FDA and other governmental agencies are investigating our Abstral promotion practices. On December 16, 2015, we received a subpoena issued by the U.S. Attorney's Office in District of New Jersey requesting the production of a broad range of documents pertaining to our marketing and promotional practices for Abstral. We have been in contact with the U.S. Attorney's Office for the District of New Jersey and are cooperating in the production of the requested documents. We are unable to predict whether we could become subject to legal or administrative actions as a result of these matters, or the impact of such matters. If we are found to be in violation of the False Claims Act, Anti-Kickback Statute, Patient Protection and Affordable Care Act, or any other applicable state or any federal fraud and abuse laws, we may be subject to penalties, such as civil and criminal penalties, damages, fines, or an administrative action of exclusion from government health care reimbursement programs. We can make no assurances as to the time or resources that will need to be devoted to these matters or their outcome, or the impact, if any, that these matters or any resulting legal or administrative proceedings may have on our business or financial condition. [Emphasis added].

55. On this news, shares of Galena fell $0.03 per share from its previous closing price to close at $.046 per share on August 9, 2016, damaging investors

56. On January 9, 2017, before the market opened, the Company filed a Form 8-K with the SEC to give an update on the U.S. Attorney's Office for the District of New Jersey and disclosing a criminal investigation, stating in relevant part:

> ***Abstral Investigation***
>
> As previously disclosed, on December 16, 2015, we received a subpoena issued by the U.S. Attorney's Office for the District of New Jersey requesting the production of a broad range of documents pertaining to our marketing and promotional practices for Abstral, the commercial product we sold in the fourth quarter of 2015. We have been in contact with the U.S. Attorney's Office for the District of New Jersey and Department of Justice, and we have come understand that the investigation being undertaken by the U.S. Attorney's Office for the District of New Jersey and Department of Justice is a criminal investigation in addition to a civil investigation that could ultimately involve the Company as well as one or more current and/or former employees. Pursuant to the Company's charter, we are currently reimbursing any former and current employees' attorney's fees with respect to the investigation. We are cooperating with the civil and criminal investigation, and through our outside counsel we have recently begun preliminary discussions with the government aimed at the ultimate resolution of the investigation regarding the Company.

57. On this news, shares of Galena fell $0.04 per share or over 1.9% from its previous closing price to close at $2.03 per share on January 9, 2017, further damaging investors.

58. On January 31, 2017, Galena filed an 8-K with the SEC announcing the resignation of Schwartz, which stated in part:

> On January 31, 2017, Galena Biopharma, Inc. (the "Company") issued a press release announcing the resignation of Mark W. Schwartz, Ph.D. as President and Chief Executive Officer and a director of the Company and its affiliates, effective immediately….
>
> […] Effective January 31, 2017, Dr. Schwartz resigned from his position as President and Chief Executive Officer and as a member of the board of directors of each of Galena Biopharma, Inc., Apthera, Inc. and Mills Pharmaceutical, LLC (collectively, the

> "Companies"). For purposes of Dr. Schwartz' Employment Agreement, dated as of August 21, 2014, Dr. Schwartz' resignation was without "Good Reason".
>
> […] In connection with his resignation, on January 31, 2017, the Company executed a Separation Agreement and General Release with Dr. Schwartz and terminated the Dr. Schwartz' Employment Agreement effective as of the resignation date. The Separation Agreement will be filed with the Annual Report on Form 10-K for the year ending December 31, 2016. The Separation Agreement provides, among other things, for the following: (a) Dr. Schwartz shall, within three days of January 31, 2017, receive his final paycheck and any unpaid vacation; (b) Dr. Schwartz shall receive $302,068.86 less required tax withholdings and authorized deductions, which is equal to six (6) months of the Employee's final base salary and six (6) months of the cost for continued health benefits coverage under COBRA….

59. On January 31, 2017, the Company issued a press release (as referenced in paragraph 58, above) entitled, "Galena Biopharma Announces the Resignation of its President and Chief Executive Officer and the Evaluation of Strategic Alternatives," stating in relevant part:

> **San Ramon, California, January 31, 2017**— Galena Biopharma, Inc. (NASDAQ: GALE), a biopharmaceutical company committed to the development and commercialization of hematology and oncology therapeutics that address unmet medical needs, today announced that the Board of Directors has entered into a separation agreement with Mark W. Schwartz, Ph.D. under which Dr. Schwartz will resign from the company and its affiliates as the President, Chief Executive Officer, and member of the Board of Directors, effective today. The Board of Directors expects to appoint an Interim Chief Executive Officer in the next couple weeks.
>
> The Board of Directors also announced that it is in the process of engaging an independent advisory firm to evaluate strategic alternatives for the company focused on maximizing stockholder value. Potential strategic alternatives that may be explored or evaluated as part of this review include continuing to advance the clinical programs as a stand-alone entity, a sale of the company, a business combination, merger or reverse merger, and a license or other disposition of corporate assets of the company. There is no

> set timetable for this process and there can be no assurance that this process will result in a transaction. While the Company evaluates its strategic alternatives, Galena's investigator-sponsored immunotherapy trials will remain ongoing. The Company is evaluating the appropriate time to commence the GALE-401 trial and anticipates making a definitive determination in the second half of 2017.
>
> "After critical assessment of the current status of the company, we believe that it is the right time to run a strategic evaluation of our opportunities as we look to maximize value for our stockholders," said Sanford J. Hillsberg, Galena's Chairman of the Board of Directors. "We acknowledge Mark's six years of service with Galena and wish him well in his future endeavors."

60. On that same day, *TheStreet.com* published an article entitled "Galena Sacks CEO Amid Escalating Criminal Probe Into Fentanyl Drug Marketing," noting the timing of Defendant Schwartz' exit coincided with the Company's admission of a criminal investigation and his outsized role in the marketing of Abstral, stating in relevant part:

> **Galena Sacks CEO Amid Escalating Criminal Probe Into Fentanyl Drug Marketing**
>
> The timing of Schwartz' exit is noteworthy given Galena's admission on Jan. 9 of a criminal investigation of the company by the federal prosecutors into the marketing of Abstral.
>
> * * *
>
> Galena Biopharma (GALE) sacked CEO Mark Schwartz on Tuesday, marking the second time in less than three years that the troubled drug company's board fired its top executive. The timing of Schwartz' exit is noteworthy given Galena's admission on Jan. 9 of a criminal investigation of the company by the U.S. Attorney's Office in New Jersey and the U.S. Department of Justice. The Feds are investigating Galena's marketing and promotional practices for Abstral, the company's fentanyl based painkiller, according to an 8K filing with the Securities and Exchange Commission.
>
> Schwartz was instrumental in Galena acquiring Abstral in 2013 and played a significant role in the drug's marketing, according to former employees. Galena divested Abstral in 2015.

61. On this news, shares of Galena fell $0.53 per share or over 32% over the next two trading days to close at $1.12 per share on February 2, 2017, further damaging investors.

62. On February 22, 2017, and in the criminal trial against Dr. Ruan and Dr. Couch (*see* ¶¶ 45 and 54, above), both doctors were found guilty on virtually all counts of operating a "pill mill". Plaintiff is informed and believes and thereon alleges that during the Ruan/Couch criminal trial, the following evidence was introduced, establishing:

(a) Dr. Ruan and Dr. Couch jointly ran C&R Pharmacy. Nine out of 10 prescriptions filled at the pharmacy from April 2012 to May 2015 were for the Fentanyl-based pain medications Subsys and Abstral.

(b) Dr. Ruan and Dr. Couch doctors bought a significant number of shares of Galena Biopharma, the company that supplied Abstral during that period.

(c) During that period Galena Biopharma's share price grew from $7 a share to $60 a share.

(d) C&R Pharmacy also set up a rebate program with Galena that both doctors allegedly profited from.

(e) Charts showing the amount of prescriptions for Abstral written in 2014:

- 1,302 - Dr. Ruan
- 649 - Dr. Couch
- 611 - Dr. Rowe

Allegedly, Dr. Rowe was also a friend of Dr. Ruan and that the next competitor after those three doctors only wrote 153 Abstral prescriptions.

(f) Drs. Ruan and Couch prescribed 68,116 and 45,285 units of fentanyl, respectively, during the time frame of the indictment, making the doctors the number one and number two prescribers of the drug in Alabama. At other points relevant to the indictment, they were the top prescribers of

Subsys and Abstral in the entire country.

(g) The Assistant U.S. Attorney stated that Drs. Ruan and Couch were "very important" to Insys and Galena claiming that top executives from both pharmaceutical companies had traveled from Arizona and Oregon, respectively, to meet the doctors in Mobile.

(h) An email chain was introduced where a pharmaceutical company executive assured Dr. Ruan that a particular pain medication, Abstral, was not directly implicated in the Michigan case, but was merely one of a class of drugs that Dr. Awerbuch was accused of dispensing improperly.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

63. Plaintiff brings this action derivatively in the right and for the benefit of the Company to redress injuries suffered and to be suffered as a direct and proximate result of the breaches of fiduciary duties and gross mismanagement by Defendants.

64. Plaintiff will adequately and fairly represent the interests of the Company and its shareholders in enforcing and prosecuting its rights and has retained counsel competent and experienced in derivative litigation.

65. Plaintiff is a current owner of Galena stock and has continuously been an owner of Galena stock during all times relevant to Defendants' illegal and wrongful course of conduct alleged herein. Plaintiff understands his obligation to hold stock throughout the duration of this action and are prepared to do so.

66. During wrongful course of conduct at the Company, the Board consisted of the Director Defendants. Because of the facts set forth throughout this Complaint, demand on the Board to institute this action is not necessary because such a demand would have been a futile

and useless act.

67. The Galena Board is currently comprised of seven (7) members – Defendants Ashton, Chin, Einhorn, Galliker, Gray, Hillsberg, and Nisi. Thus, Plaintiff is required to show that a majority of the Demand Defendants, *i.e.*, four (4), cannot exercise independent objective judgment about whether to bring this action or whether to vigorously prosecute this action.

68. The Director Defendants face a substantial likelihood of liability in this action because they caused the Company to issue false and misleading statements concerning its future prospects. Because of their advisory, executive, managerial, and directorial positions with the Company, each of the Defendants had knowledge of material non-public information regarding the Company and was directly involved in the operations of the Company at the highest levels.

69. Defendants either knew or should have known of the false and misleading statements that were issued on the Company's behalf and took no steps in a good faith effort to prevent or remedy that situation.

70. The Director Defendants (or at the very least a majority of them) cannot exercise independent objective judgment about whether to bring this action or whether to vigorously prosecute this action. For the reasons that follow, and for reasons detailed elsewhere in this complaint, Plaintiff has not made (and should be excused from making) a pre-filing demand on the Board to initiate this action because making a demand would be a futile and useless act.

71. Each of the Defendants approved and/or permitted the wrongs alleged herein to have occurred and participated in efforts to conceal or disguise those wrongs from the Company's stockholders or recklessly and/or with gross negligence disregarded the wrongs complained of herein, and are therefore not disinterested parties.

72. Each of the Defendants authorized and/or permitted the false statements to be

disseminated directly to the public and made available and distributed to shareholders, authorized and/or permitted the issuance of various false and misleading statements, and are principal beneficiaries of the wrongdoing alleged herein, and thus, could not fairly and fully prosecute such a suit even if they instituted it.

73. Because of their participation in the gross dereliction of fiduciary duties, and breaches of the duties of due care, good faith, and loyalty, Defendants are unable to comply with their fiduciary duties and prosecute this action. Each of them is in a position of irreconcilable conflict of interest in terms of the prosecution of this action and defending themselves in the securities fraud class action lawsuit brought under the Securities Exchange Act of 1934.

74. Additionally, each of the Defendants received payments, benefits, stock options, and other emoluments by virtue of their membership on the Board and their control of the Company.

THE DIRECTOR DEFENDANTS ARE NOT INDEPENDENT OR DISINTERESTED

Defendant Hillsberg

75. In its Pre-14A and in other Galena filings with the SEC, the Company admits that Hillsberg is not independent because of his relationship with the law firm TroyGould PC, where he is an executive officer. TroyGould PC has served as Galena's outside corporate counsel and has been paid millions of dollars for its years of legal service to Galena. Thus defendants have admitted that defendant Hillsberg lacks independence from demonstrably interested directors, rendering him incapable of impartially considering a demand to commence and vigorously prosecute this action. This admission of Hillsberg's non-independence has also appeared on Galena's website, and as discussed and displayed in ¶ 76, below.

Defendant Ashton

76. According to the Company, Ashton is not independent. Galena's website contained a list of non-employee directors, with an "I" designating a director as independent. As illustrated below, Defendants have not conferred such a designation on defendant Ashton (*see* http://investors.galenabiopharma.com/committees.cfm). Thus defendants have admitted that Ashton lacks independence from demonstrably interested directors, rendering him incapable of impartially considering a demand to commence and vigorously prosecute this action.

Committee Composition

	Audit	Compensation	Nominating and Governance	Ad Hoc (Strategy, Pricing, etc)
William L. Ashton				Member
Dr, Richard Chin, M.D. I	Member	Member	Member	
Stephen S. Galliker I	Chair		Member	
Sanford J. Hillsberg ★				Chair
Steven A. Kriegsman I		Chair		Member
Dr. Rudolph Nisi, M.D. I	Member	Member	Chair	Member

★ = Chair of the Board   Chair = Chair   Member = Member   I = Independent Director

77. Additionally, Ashton was a member of the Board of Directors and Galena's Compensation, Corporate Governance and Nominating, and Ad Hoc committees when Schwartz resigned and entered into a Separation Agreement with Galena. As discussed herein, Ashton approved the award of performance based stock options to Schwartz ***the day after*** Galena received a subpoena requiring production of document relating to the marketing and promotion of Abstral. Ashton abdicated his oversight and other director fiduciary duties by failing to complete any due diligence relating to this matter prior to approving and

recommending this stock option award to Schwartz. Further, in its January 31, 2017 8-K which announced the resignation of Schwartz, Galena states that "[f]or purposes of Dr. Schwartz' Employment Agreement, dated as of August 21, 2014, Dr. Schwartz' resignation was without "Good Reason". Schwartz's severance payment (in excess of $300,000.00) included amounts that would not have been paid had he been terminated "for cause" as defined by his Employment Agreement. Ashton failed to implement the Termination provisions of the Schwartz Employment Agreement, notwithstanding the escalating issues associated with governmental investigation of Galena's Abstral marketing and promotional practices.

78. Based upon the foregoing and other facts contained herein, Aston faces a substantial likelihood of liability for his breach of fiduciary duties and any demand upon him is futile.

Defendant Nisi

79. Nisi has a historical relationship with Hillsberg, an admitted non-independent director of Galena, which Plaintiff is informed and believes the Company never disclosed in any of its public filings. Nisi served as a director of ImmunoCellular Therapeutics, Ltd. while Hillsberg was its Secretary. This Galena disclosure failure raises red flags and supports the conclusion that Nisi is also not independent.

80. Additionally, Nisi was a member of the Board of Directors and Galena's Compensation, Corporate Governance and Nominating, and Audit committees when Schwartz resigned and entered into a Separation Agreement with Galena. As discussed herein, Nisi approved the award of performance based stock options to Schwartz ***the day after*** Galena received a subpoena requiring production of document relating to the marketing and promotion of Abstral. Nisi abdicated his oversight and other director fiduciary duties by failing to

complete any due diligence relating to this matter prior to approving and recommending this stock option award to Schwartz. Further, in its January 31, 2017 8-K which announced the resignation of Schwartz, Galena states that "[f]or purposes of Dr. Schwartz' Employment Agreement, dated as of August 21, 2014, Dr. Schwartz' resignation was without "Good Reason". Schwartz's severance payment (in excess of $300,000.00) included amounts that would not have been paid had he been terminated "for cause" as defined by his Employment Agreement. Nisi failed to implement the Termination provisions of the Schwartz Employment Agreement, notwithstanding the escalating issues associated with governmental investigation of Galena's Abstral marketing and promotional practices.

81. Based upon the foregoing and other facts contained herein, Nisi faces a substantial likelihood of liability for his breach of fiduciary duties and any demand upon him is futile.

Defendant Galliker

82. Galliker was a member of the Board of Directors and Galena's Compensation, and Audit committees when Schwartz resigned and entered into a Separation Agreement with Galena. As discussed herein, Galliker approved the award of performance based stock options to Schwartz ***the day after*** Galena received a subpoena requiring production of document relating to the marketing and promotion of Abstral. Galliker abdicated his oversight and other director fiduciary duties by failing to complete any due diligence relating to this matter prior to approving and recommending this stock option award to Schwartz. Further, in its January 31, 2017 8-K which announced the resignation of Schwartz, Galena states that "[f]or purposes of Dr. Schwartz' Employment Agreement, dated as of August 21, 2014, Dr. Schwartz' resignation was without "Good Reason". Schwartz's severance payment (in excess of $300,000.00)

included amounts that would not have been paid had he been terminated "for cause" as defined by his Employment Agreement. Galliker failed to implement the Termination provisions of the Schwartz Employment Agreement, notwithstanding the escalating issues associated with governmental investigation of Galena's Abstral marketing and promotional practices.

83. Based upon the foregoing and other facts contained herein, Galliker faces a substantial likelihood of liability for his breach of fiduciary duties and any demand upon him is futile.

Defendant Chin

84. Chin was a member of the Board of Directors and Galena's Compensation, and Corporate Governance and Nominating committees when Schwartz resigned and entered into a Separation Agreement with Galena. As discussed herein, Chin approved the award of performance based stock options to Schwartz ***the day after*** Galena received a subpoena requiring production of document relating to the marketing and promotion of Abstral. Chin abdicated his oversight and other director fiduciary duties by failing to complete any due diligence relating to this matter prior to approving and recommending this stock option award to Schwartz. Further, in its January 31, 2017 8-K which announced the resignation of Schwartz, Galena states that "[f]or purposes of Dr. Schwartz' Employment Agreement, dated as of August 21, 2014, Dr. Schwartz' resignation was without "Good Reason". Schwartz's severance payment (in excess of $300,000.00) included amounts that would not have been paid had he been terminated "for cause" as defined by his Employment Agreement. Chin failed to implement the Termination provisions of the Schwartz Employment Agreement, notwithstanding the escalating issues associated with governmental investigation of Galena's Abstral marketing and promotional practices.

85. Based upon the foregoing and other facts contained herein, Chin faces a substantial likelihood of liability for his breach of fiduciary duties and any demand upon him is futile.

Defendant Gray

86. Gray was a member of the Board of Directors and Galena's Compensation, and Audit committees when Schwartz resigned and entered into a Separation Agreement with Galena. As discussed herein, Gray approved the award of performance based stock options to Schwartz ***the day after*** Galena received a subpoena requiring production of document relating to the marketing and promotion of Abstral. Gray abdicated her oversight and other director fiduciary duties by failing to complete any due diligence relating to this matter prior to approving and recommending this stock option award to Schwartz. Further, in its January 31, 2017 8-K which announced the resignation of Schwartz, Galena states that "[f]or purposes of Dr. Schwartz' Employment Agreement, dated as of August 21, 2014, Dr. Schwartz' resignation was without "Good Reason". Schwartz's severance payment (in excess of $300,000.00) included amounts that would not have been paid had he been terminated "for cause" as defined by his Employment Agreement. Gray failed to implement the Termination provisions of the Schwartz Employment Agreement, notwithstanding the escalating issues associated with governmental investigation of Galena's Abstral marketing and promotional practices.

87. Additionally, Gray was a Director of Apthera, Inc. while Schwartz was its President and CEO. She also served as a Director of Dyax Corp. while Galliker served in various executive officer positions for Dyax.

88. Based upon the foregoing and other facts contained herein, Gray faces a substantial likelihood of liability for his breach of fiduciary duties and any demand upon her is

futile.

Defendant Einhorn

89. Einhorn was a member of the Board of Directors and Galena's Nominating and Governance Committee, and Audit committees when Schwartz resigned and entered into a Separation Agreement with Galena. As discussed herein, Einhorn approved the award of performance based stock options to Schwartz ***the day after*** Galena received a subpoena requiring production of document relating to the marketing and promotion of Abstral. Einhorn abdicated his oversight and other director fiduciary duties by failing to complete any due diligence relating to this matter prior to approving and recommending this stock option award to Schwartz. Further, in its January 31, 2017 8-K which announced the resignation of Schwartz, Galena states that "[f]or purposes of Dr. Schwartz' Employment Agreement, dated as of August 21, 2014, Dr. Schwartz' resignation was without "Good Reason". Schwartz's severance payment (in excess of $300,000.00) included amounts that would not have been paid had he been terminated "for cause" as defined by his Employment Agreement. Einhorn failed to implement the Termination provisions of the Schwartz Employment Agreement, notwithstanding the escalating issues associated with governmental investigation of Galena's Abstral marketing and promotional practices.

90. Based upon the foregoing and other facts contained herein, Einhorn faces a substantial likelihood of liability for his breach of fiduciary duties and any demand upon him is futile.

Nominating and Governance Committee - Defendants Ashton, Chin, Einhorn, Gray, and Nisi

91. As members of the Nominating and Governance Committee, Ashton, Chin,

Einhorn, Gray, and Nisi had a duty, among other things, to annually review the corporate governance guidelines of the Company; and monitor and evaluate the performance of the Board and lead the Board in an annual self-assessment of its practices and effectiveness.

92. Ashton, Chin, Einhorn, Gray, and Nisi breached their fiduciary duty of loyalty by failing to ensure that the Company had an adequate system of internal controls in place to prevent improper marketing and promotion of Abstral by the Company, and failure to truthfully and timely report on these events. Accordingly, Ashton, Chin, Einhorn, Gray, and Nisi breached their fiduciary duties in failing to implement such internal controls and, therefore, face a substantial likelihood of liability.

93. Demand in this case is also excused as to Ashton, Chin, Einhorn, Gray, and Nisi because they (among the others) control the Company and are beholden to each other.

Audit Committee Members - Defendants Einhorn, Galliker, Gray, and Nisi

94. As members of the Audit Committee, Einhorn, Galliker, Gray, and Nisi are responsible to assure compliance with laws, regulations or any internal rules or policies of the Company, as required by the Company's Code of Ethics and Conduct. Einhorn, Galliker, Gray, and Nisi breached their fiduciary duty of loyalty by failing to ensure that the Company had an adequate system of internal controls to identify and prevent violation of any laws, regulations or internal rules or policies. Accordingly, Einhorn, Galliker, Gray, and Nisi breached their fiduciary duties in failing their oversight responsibilities and failing to implement such internal controls and, therefore, face a substantial likelihood of liability.

95. Demand in this case is also excused as to Einhorn, Galliker, Gray, and Nisi because they (among the others) control the Company and are beholden to each other.

FIRST CAUSE OF ACTION

Against Defendants for Breach of Fiduciary Duties

96. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

97. Defendants owe the Company fiduciary obligations. By reason of their fiduciary relationships, Defendants owed and owe the Company the highest obligation of good faith, fair dealing, loyalty, and due care.

98. Defendants violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, and good faith.

99. Defendants engaged in a sustained and systematic failure to properly exercise their fiduciary duties. In breach of their fiduciary duties owed to Galena, Defendants caused and facilitated the alleged illegal and improper marketing and promotion of Abstral, and failed to properly oversee Galena's business, rendering them personally liable to the Company for breaching their fiduciary duties.

100. Defendants had actual or constructive knowledge that Defendants caused and facilitated the alleged illegal and improper marketing and promotion of Abstral. Defendants had actual knowledge of the above misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth, in that they failed to ascertain and to disclose such facts, even though such facts were available to them.

101. As a direct and proximate result of Defendants' failure to perform their fiduciary obligations, the Company has sustained significant damages. As a result of the misconduct alleged herein, Defendants are liable to the Company.

102. As a direct and proximate result of Defendants' breach of their fiduciary duties, the Company has suffered damage, not only monetarily, but also to its corporate image and

goodwill. Such damage includes, among other things, costs associated with defending securities lawsuits, severe damage to the share price of the Company, resulting in an increased cost of capital, the waste of corporate assets, and reputational harm.

SECOND CAUSE OF ACTION

Against Defendants for Gross Mismanagement

103. Plaintiff incorporates by reference and re-alleges each allegation contained above, as though fully set forth herein.

104. By their actions alleged herein, Defendants, either directly or through aiding and abetting, abandoned and abdicated their responsibilities and fiduciary duties with regard to prudently managing the assets and business of the Company in a manner consistent with the operations of a publicly held corporation.

105. As a direct and proximate result of Defendants' gross mismanagement and breaches of duty alleged herein, the Company has sustained significant damages in excess of millions of dollars.

106. Because of the misconduct and breaches of duty alleged herein, Defendants are liable to the Company.

THIRD CAUSE OF ACTION

Against Defendants for Unjust Enrichment

107. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein

108. By their wrongful acts and the omissions of material fact that they caused to be made, Defendants were unjustly enriched at the expense of, and to the detriment of, the Company.

109. During the Relevant Period, Defendants either received bonuses, stock options, or similar compensation from the Company that was tied to the financial performance or artificially inflated valuation of the Company or received compensation that was unjust in light of Defendants' bad faith conduct.

110. Plaintiff, as a shareholder and a representative of the Company, seeks restitution from Defendants and seeks an order from this Court disgorging all profits, benefits, and other compensation, including any performance-based or valuation-based compensation, obtained by Defendants due to their wrongful conduct and breach of their fiduciary duties.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Determining that this action is a proper derivative action maintainable under law, and that demand is excused;

B. Awarding, against all Defendants and in favor of the Company, the damages sustained by the Company as a result of Defendants' breaches of their fiduciary duties;

C. Directing the Company to take all necessary actions to reform and improve its corporate governance and internal procedures, to comply with the Company's existing governance obligations and all applicable laws and to protect the Company and its investors from a recurrence of the damaging events described herein;

D. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

E. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: March 16, 2017

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Attorneys for Plaintiff

VERIFICATION

I, Larry Keller, declare that I have reviewed the Verified Shareholder Derivative Complaint ("Complaint") prepared on behalf of Nominal Defendant Galena Biopharma, Inc. and authorize its filing. I have reviewed the allegations made in the Complaint, and to those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely on my counsel and their investigation and for that reason believe them to be true. I further declare that I am a current holder, and have been a holder, of Galena Biopharma, Inc., common stock at all relevant times.

Date: February 28, 2017

LARRY KELLER